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FILED
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CHARLES ELMORE

IN THE

Supreme Court of the United States

OCTOBER TERM, 1946.

No. 565.

FAIRFIELD STEAMSHIP CORPORATION,
Petitioner,

—against—

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

REPLY BRIEF FOR THE PETITIONER.

The Respondent has filed a brief in opposition to the Petition for a Writ of Certiorari.

The Respondent's brief in its argument in opposing the granting of a writ is based entirely upon Respondent's contention that this case is controlled by the decision of this Court in *Commissioner* v. *Court Holding Company,* 324 U. S. 331.

The Petitioner, in asking this Court to grant a writ of certiorari disagreed with the majority of the Tax Court in applying the *Court Holding* case to the facts of this case, and this position was clearly supported by three dissenting members of the Tax Court. The Circuit Court of Appeals in its decision definitely stated that it could not agree with the Tax Court that the principles laid down in the *Court Holding* case were applicable to the facts in this case.

It is obvious that the Petitioner here would be financially benefitted by a favorable decision of this Court should this petition be granted, and this Court renders a decision in Petitioner's favor. It was not the financial interest of this Petitioner alone which moved this Petitioner to urge the application for the Writ. The Petitioner feels, and it is respectfully submitted that a real question of general public interest is involved.

This case must be governed by the facts. Other cases may have the controlling facts similar, or may in some respects differ. By the decision of the Circuit Court of Appeals, taxpayers and the bar find themselves without definite principles to guide them in transactions relating to non-taxable transfers. It is impossible to determine the rights of taxpayers where Statutory provisions may be materially changed or nullified by the Department of Internal Revenue in its effort to collect taxes.

We all know that as long as we have taxes, the taxpayer will seek to lessen his burden, and the Government will seek to make a maximum collection, but under circumstances such as are presented, not only in this case, but in every case where the question of non-taxable transfer is concerned, we ask and urge that this Court grant the petition for a writ, review the Statute and the subject matter, and lay down some workable principles to be followed so that justice may be done not only to the taxpayer, but to the Government.

Respectfully submitted,

FRANK V. BARNS,
Attorney for Petitioner.

WINTHROP O. COOK,
Of Counsel.